

BRAKER LANE EXTENSION
INTERLOCAL COOPERATION AGREEMENT
CITY OF AUSTIN AND TRAVIS COUNTY

This Interlocal Cooperation Agreement is made and entered into by and between the City of Austin, Texas (the “City”) and Travis County, Texas (the “County”), hereinafter collectively referred to as the “Parties”, upon the premises and for the consideration stated herein.

WHEREAS, the County has entered into that certain Braker Lane Participation Agreement with Austin Boise Ventures, LP, Wildhorse Investments, Ltd., and J&T Development Group (“Developers”) for the construction of and cost participation in the extension of a section of Braker Lane as a four lane arterial within right-of-way dedicated by Developer and/or as subsequently acquired (the “Project”); and

WHEREAS, the Project is located within and adjacent to the limited purposes City limits within the State Highway 130 development corridor; and

WHEREAS, a portion of the Project is located within the Limited Purpose Annexation Area of the City and is the subject to that certain Ordinance No. 020214-43 and the incorporated Regulatory Plan dated effective on February 25, 2002; and

WHEREAS, the Project forms a connecting link in the future transportation infrastructure of the City and provides for interconnectivity to other arterial highways and State Highway 130; and

WHEREAS, the Project will accommodate traffic into and out of the present and future full purpose limits of the City in excess of the traffic created by the adjacent private development, and

WHEREAS, the Project, which is generally described and depicted in attached Exhibit “A”, may be developed in multiple phases, and

WHEREAS, premises considered, the City desires to participate in the cost of the development and construction of the Project; and

WHEREAS, the Parties intend to conform to this Agreement in all respects with the Interlocal Cooperation Act, Texas Government Code Section 791.001, et seq.;

NOW, THEREFORE, the Parties agree as follows:

1. Project Management.

- (a) The County will provide the project management services for the development and construction of the Project, as set forth herein. In doing so, the County will be responsible for the management of the Braker Lane Participation Agreement, which has been approved by the County and the Developers.
- (b) The Director of Public Works of the Travis County Transportation and Natural Resources Department (the “County’s Director”) will act on behalf of the County with respect to the Project, coordinate with the City, receive and transmit information and instructions, and will have complete authority to interpret and define the County’s policies and decisions with respect to the Project. The County’s Director will designate a County Project Manager and may designate other representatives to transmit instructions and act on behalf of the County with respect to the Project.
- (c) The City's Public Works Director (the “City’s Director”) will act on behalf of the City with respect to the Project, coordinate with the County, receive and transmit information and instructions, and will have complete authority to interpret and define the City’s policies and decisions with respect to the Project. The City’s Director will designate a City Project Manager and may designate other representatives to transmit instructions and act on behalf of the City with respect to the Project.
- (d) If a disagreement between City and County arises regarding engineering design, design and construction standards, plans and specifications, inspection and testing, deficiencies and remedial action, change orders, or any other requirement or provision of this Agreement, and the disagreement is not resolved by the City Project Manager and the County Project Manager, it shall be referred as soon as possible to the City’s Director and the County’s Director for resolution. If the Directors do not resolve the issue, it shall be referred as soon as possible to the Assistant City Manager responsible for public works and the Executive Manager of the Travis County Transportation and Natural Resources Department for resolution.
- (e) The Project may be constructed pursuant to Section 232.105, Local Government Code and Sections 791.001, Government Code.

2. Project Development.

- (a) The County will be responsible for the management of the development of the design and construction of the Project, including (i) the development of the engineering design, plans and specifications for the roadway improvements and sidewalks, (ii) the surveying, (iii) the right-of-way and easement acquisition, (iv) the construction, (v) the inspection and testing and any required permitting and environmental assessments and clearances associated with the Project, and (vi) acceptance of the completed work.
- (b) The plans and specifications for the Project shall be in accordance with the design and construction standards applicable under Title 30, Austin City Code (Austin/Travis County Subdivision Regulations), as amended by Ordinance No. 020214-43 and the incorporated Regulatory Plan dated effective February 25, 2002, unless otherwise agreed by the Parties. In addition, the County will ensure that the plans and specifications will comply with the applicable Texas Accessibility Standards.
- (c) The County will ensure that the design engineer provides professional liability, automobile liability, and general liability insurance in accordance with the standard requirements of the County for such projects, during the term of the design and construction and the County will have the County and the City named as an additional insured with respect to such general liability and automobile liability coverage.
- (d) The County and, to the extent set forth herein, the City will be responsible for the review and approval of the engineering design, plans and specifications and for construction inspection and testing for the Project. In addition, the County and, to the extent set forth herein, the City will be responsible for the review and approval of any modifications to the engineering design, plans, and specifications for the Project, during the development and construction of the Project.
- (e) A City permit and associated fees shall be required only for any part of the Project within the City's full purpose corporate limits. The application review process and fees for any such permit shall be the same as the process and fee requirements that the City applies to its own road projects. The City shall coordinate the City's review of any permit application and issuance of the permit concurrently with the City's review and approval of engineering design and plans and specifications for the Project.
- (f) The Parties will participate in joint review meetings with representatives from all affected City and County Departments in order to avoid and resolve conflicts in review comments. The City will provide a designated review team to expedite the review process.

- (g) The County shall require the contractor to immediately take any appropriate remedial action to correct any deficiencies identified by the City.

3. Project Bidding & Award of Construction Contract.

The County will be responsible for overseeing the solicitation of bids for the construction of the Project based on the approved plans and specifications. Bids shall be solicited by means of a competitive process and in accordance with the County's minority and women-owned businesses policy. If the Developer solicits the bids, bids from at least three (3) reputable contractors will be solicited. The County will notify the City of the lowest responsible bidder and the amount of the bid for the Project and the City shall respond within seven (7) working days. Upon written agreement of the City, the County will approve a firm unit-price or lump sum contract for the construction of the Project with the successful bidder.

4. Additional Management Duties of the County. The County hereby covenants and agrees to provide to the City:

- (a) four (4) sets of the plans and specifications for the construction of the Project at appropriate intervals for the City's review and approval;
- (b) written responses to the City's initial plan review comments within fourteen (14) working days of receipt from the City;
- (c) written notice of the schedule for design and the advertisement for bids, award of contract, and construction of the Project;
- (d) written notice of the bid tabs for the Project;
- (e) written copy of all contracts affecting the Project, including accompanying information regarding compliance with the County's minority and women owned business policy;
- (f) a monthly itemized statement of all disbursements made and debts incurred during the preceding month relating to the Project, including copies of invoices, statements, vouchers, or any other evidence of payment of debt and accompanying information regarding compliance with the County's minority and women owned business policy;
- (g) executed change orders, jointly approved by the City and the County, related to the Project;

- (h) sufficient notice, documentation and opportunity for the City to review and jointly approve the construction contractor's application for final payment with accompanying information regarding compliance with the County's minority and women owned business policy;
- (i) a copy of any change order request related to the Project within two (2) working days of its receipt by the County, by delivery to the City's Project Manager for review and approval; and
- (h) upon satisfactory completion of construction and any applicable warranty or construction performance period, the County will accept the portion of the Project which is located within the County, and furnish the City a copy of the record drawings of the Project for the City's records.

5. Management Duties of the City. The City hereby covenants and agrees to:

- (a) review and approve the submitted plans and specifications by providing any initial comments within fourteen (14) working days of submittal, review and approve the County's responses to those initial comments within seven (7) working days, and work in good faith to resolve any outstanding issues;
- (b) expeditiously review any applicable permit applications and work in good faith to resolve any outstanding issues;
- (c) review any change order proposal for the Project and return the change order request to the County within five (5) working days of its receipt by the City's Project Manager, with a written recommendation for its disposition; respond to requests for information within three (3) working days and requests for approval of shop drawings within ten (10) working days;
- (d) at the option of the City, perform any additional independent inspection and testing on the Project in coordination with the County's inspectors and as agreed to by the County and City Project Managers, and in a timely manner; and in connection therewith, the City will designate inspectors to make any such inspections, including any joint final inspection of the completed Project with the County; the City's inspectors shall communicate any issues to the County's inspectors only, and County inspectors will in turn communicate those issues to the construction contractor;
- (e) coordinate with the City and County Project Managers, as reasonable and necessary;

- (f) immediately report any deficiencies observed in the construction of the Project in writing to the County's Project Manager;
 - (g) review and jointly approve the construction contractor's application for final payment;
 - (h) attend meetings at the request of the County's Project Manager; and
 - (i) upon satisfactory completion of construction and any applicable warranty or construction performance period, the City will accept the portion of the Project, which is located within the City.
- 6. Bond and Guarantee. All construction contracts affecting the Project shall include a payment and performance bond acceptable to and in favor of and benefiting the County and the City, for the full amount of the contract and a warranty by the contractor executed in favor of and benefiting the County and the City, for a period of one year from the date of acceptance of the Project.
- 7. Liability. To the extent allowed by Texas law, the County and the City agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions. In addition, the construction contractor shall be required to provide workers compensation insurance, auto liability and general liability insurance in the standard amounts required by the County. The County and the City will be included as an additional insureds on the above-referenced insurance policies and a waiver of subrogation will be provided on the auto liability, general liability and worker's compensation coverages.
- 8. Financial Obligations.
 - (a) The Developer shall initially pay for engineering services and deliverables and project management and be reimbursed by the County as provided in the Developer Agreement.
 - (b) The Developer will initially pay all costs of construction of the Project, including construction, surveying, inspection, testing, and the cost of any change orders made necessary by field changes to address unanticipated conditions. The County will reimburse the Developer one third (1/3) of those costs with funds the City deposits with the County under this Agreement, not to exceed the amount of \$2,670,000.00, unless otherwise approved by the City, and one third (1/3) of those costs with the County's own funds.
 - (c) The City shall deposit \$2,670,000.00 into an escrow account with Travis County within 30 calendar days of notification to the City by the County

of the successful bidder and the bid amount, unless otherwise agreed to by the City and the County in writing.

- (d) The County shall obtain the written approval of the City for all change orders prior to the County issuing the approved change order to the Developer and/or contractor, such approval not to be unreasonably withheld or delayed. The City's Project Manager shall meet with the County's Project Manager to review the contractor's progress reports and invoices for the Project before approval by the County.
- (d) The City agrees to pay all liquidated damages, delay damages, demobilization costs, re-mobilization costs, and any other associated costs of the construction contract for the Project by reason of the City's non-payment of any change order within ninety (90) days of the date of submittal by the County.
- (e) The County shall promptly notify the City of any such claim for damages and the County and the City shall negotiate for the resolution of the claim. In the event that a decision is made to litigate such a claim, the City shall be solely responsible for any or all costs recited above, and the costs of litigation, including, but not limited to, attorney's fees, court costs, depositions, experts, the amount of any damages contained in a judgment or settlement, interest, and the costs of appeal.
- (f) The Parties agree to and shall provide their respective shares for the development of the Project on a timely basis in order to meet the Project schedule. If required under this Agreement, the City shall deposit any additional City funds due within ninety (90) days of receipt of invoice by the County, such invoice to be accompanied by the change order request from the construction contractor, which has been recommended for approval by the County's and the City's Project Manager.
- (g) The County Treasurer shall act as Escrow Agent for the management of the City's funds and shall deposit the funds in an interest bearing escrow account. The County shall invest the funds in accordance with the Public Funds Investment Act, and any other applicable laws or bond covenants. The interest and any unused portion of the public funds provided by the City under this agreement shall be returned to the City within 30 calendar days after the completion of the Project. The County shall provide the City, at least quarterly, with an accounting of the deposits to and disbursements from the City's escrow account. The County will make its records available, at reasonable times, to the City's auditors, or its independent financial advisors or other professionals who provide arbitrage rebate calculations to the City.

- (h) The County Treasurer shall timely pay submitted invoices for the Project. The invoices for the Project will be paid on the basis of work completed in accordance with the approved plans and specifications.
- (i) The City acknowledges that, in connection with the execution of this Agreement, it has received the analyses and recommendations required by City of Austin Ordinance No. 000824-22 establishing covenants regarding the general obligation bonds authorized under Proposition No. 1 on November 7, 2000. The City may reimburse itself for its costs incurred under this Agreement from any district assessments or taxes allocated to the payment of such costs at such time a special district is created in the area of the project and the district establishes such an assessment or tax.

9. Miscellaneous.

- (a) Force Majeure. In the event that the performance by the County or the City of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act of conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as it reasonably necessary after such occurrence to remedy the effects hereto.
- (b) Notice. Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

CITY: Sondra Creighton, Director
City of Austin Public Works Department
505 Barton Springs Road
Austin, Texas 78704

WITH COPY TO: Gordon Bowman
Assistant City Attorney
City of Austin Law Department
301 W. 2nd Street
Austin, Texas 78701

COUNTY: Joe Gieselman
Executive Manager, TNR
P. O. Box 1748
Austin, Texas 78767

WITH A COPY TO: David Escamilla
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767

(c) Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.

(d) Entire Agreement. This Agreement contains the complete and entire Agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the parties respecting the joint construction of the Projects. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the parties hereto. No official, representative, agent, or employee of Travis County, Texas has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the Commissioners Court of Travis County, Texas. The recitals set forth above and the attached exhibits are incorporated herein.

(e) Effective Date. This Agreement takes effect upon the last date of due execution of the Agreement by the County and the City.

(f) Other Instruments. The Parties hereto covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(g) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

(h) Current Funds. The party or parties paying for the performance of governmental functions or services shall make payments therefore from current revenues available to the paying party.

CITY OF AUSTIN, TEXAS

By: _____

Name: _____

Title: _____

Authorized Representative

Date: _____

Approved as to Form:

Assistant City Attorney

TRAVIS COUNTY, TEXAS

By: _____
Samuel T. Biscoe, County Judge

Date: _____